

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:16-cr-00052-MR-DLH-1**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) ORDER
)
)
DEORDRICK BOYKIN,)
)
Defendant.)
)

THIS MATTER is before the Court upon the Defendant's Appeal [Doc. 116] of the Magistrate Judge's Order [Doc. 115] denying the Defendant's Motion for Issuance of Subpoenas [Doc. 114].

I. PROCEDURAL BACKGROUND

On June 17, 2016, the Defendant pleaded guilty to one count of conspiracy to distribute and to possess with intent to distribute a quantity of heroin, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 841(b)(1)(C). [Doc. 55]. In anticipation of the Defendant's sentencing, a Presentence Report (PSR) was prepared. In the PSR, the probation officer recommended that the Defendant be sentenced as a career offender [Doc. 102 at ¶16] based on his prior Georgia state conviction for Felony Possession of Cocaine

[Id. at ¶ 25] and his three prior North Carolina convictions for Felony Sell Schedule II Controlled Substance [Id. at ¶ 31]. A sentencing hearing was commenced on January 19, 2017, but was continued at the request of the Defendant. [See Minute Order entered Jan. 19, 2017 continuing sentencing hearing].

On March 2, 2017, the Defendant through his counsel filed a Motion for Issuance of Subpoenas. [Doc. 114]. In his motion, the Defendant requests that the Court issue a subpoena directed to the District Attorney of Fulton County, Georgia, “to appear at the defendant’s sentencing hearing and to bring with him all the files of his office relating to the cases against the defendant resolved in Fulton County, Georgia, Superior Court on or about December 20, 2001.” [Id. at 2]. For grounds, the Defendant states that the presence of the District Attorney is necessary to establish that the amount of drugs at issue in those convictions was “extremely small” and that, therefore, the proposed career offender designation “substantially overstates his involvement in the illegal drug industry.” [Id. at 1].

The Honorable Dennis L. Howell, United States Magistrate Judge, denied the Defendant’s motion, noting in part that the Defendant failed to cite any rule or statute pursuant to which the Defendant sought the issuance of

such subpoena. [Doc. 115 at 1]. Assuming that the motion was made pursuant to Rule 17(b), the Magistrate Judge noted that the Defendant failed to make the requisite showing of an inability to pay. [Id.]. The Defendant now appeals that Order. [Doc. 116].¹

II. DISCUSSION

Rule 17 of the Federal Rules of Criminal Procedure governs the issuance of subpoenas in criminal cases. Subsection (b) of that Rule allows for the issuance of subpoenas at the government's expense where the defendant shows (1) an inability to pay the witness's fees and (2) that the presence of the subpoenaed witness is necessary to present an adequate defense. Fed. R. Crim. P. 17(b). The grant or denial of a request for a subpoena under Rule 17(b) is a matter within the sound discretion of the Court. United States v. Gripper, 122 F. App'x 15, 17 (4th Cir. 2005) (per curiam). A motion for a Rule 17(b) is properly denied where the witness subject to the requested subpoena "cannot offer relevant evidence." United States v. Mack, 455 F. App'x 323, 327 (4th Cir. 2011) (per curiam).

¹ While the Defendant's addresses his indigent status on appeal, the Defendant continues to fail to cite any legal authority in support of his motion.

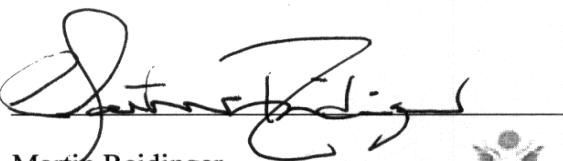
Here, the Defendant has failed to demonstrate that the production of the District Attorney for Fulton County, Georgia, is necessary for the presentation of an adequate defense at sentencing. Moreover, the Defendant has failed to establish how the District Attorney's testimony or the production of his files would be relevant to establishing the drug quantities involved in his prior convictions. For these reasons, the Defendant's appeal of the Magistrate Judge's Order denying his request for the issuance of subpoenas is denied.

ORDER

IT IS, THEREFORE, ORDERED that the Defendant's Appeal of the Magistrate Judge's Order denying the Defendant's Motion for Issuance of Subpoenas [Doc. 116] is **DENIED**, and the Magistrate Judge's Order [Doc. 115] is **AFFIRMED**.

Signed: March 14, 2017

IT IS SO ORDERED.



Martin Reidinger
United States District Judge

